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OGC Has Reviewed

11 March 1946

Chief, Finance Branch

Legal Division

Payment of claims for alterations and repairs to OAS buildings

1. Please refer to your memorandum of 7 February 1946 relating to this subject, with the attached claims of [redacted] both of which are returned herewith.

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2. As your memorandum points out, there is no specific provision in the OAS appropriation language for repairs to or alterations in public buildings occupied by OAS, although under some circumstances, discussed below, basis for such expenditures might be found in the general language: "For all expenses necessary to enable the Office of Strategic Services to carry out its functions and activities ***". Further, the statutes referred to in your memorandum vest charge of public buildings occupied by OAS in PIA (43 U. S. C. 19), and prohibit the expenditure of funds for repair purposes greater than the amount specifically appropriated (41 U. S. C. 11).

3. It does not follow from the foregoing, however, that this agency is powerless to expend regularly appropriated funds for alterations and improvements to public buildings occupied by it. Even though an appropriation for repairs and improvements may have been made to the agency charged with the supervision of public buildings, the agency occupying the buildings may privately expense generally unappropriated funds for such repairs, alterations and improvements where the latter are not necessary to the ordinary use or operation of the building but are to accommodate special functions or activities of the agency for which funds have been generally appropriated. 16 C. G. 84; see also 16 C. G. 160; 17 C. G. 389. The determinative factor is the relationship borne by the expenditures to proper agency objectives; i. e., generally unappropriated funds may not be used to make space in public buildings suitable for occupancy by a government office force, even though the PIA appropriation may be inadequate for such purposes. 17 C. G. 1050. The only justification for such expenditures is that the building repairs and improvements are necessary to the proper functioning of the agency and are incidental to the accomplishment of some activity or objective of the agency recognized directly or indirectly by the appropriation act.

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4. We therefore recommend that, where security considerations permit, payment for repairs and alterations falling within the classes described in the foregoing paragraph be made out of .601 funds. (In the first instance, as your memorandum points out, all repairs and improvements should be procured from FEA, wherever possible to do so, and recourse may be had to any appropriated fund of this agency only where it is impossible to call on FEA, or where FEA is for any reason unable or unwilling to effect the necessary repairs or alterations.)

5. We recognize that the rule set forth above with respect to .601 funds will be difficult of application in many cases, and the Finance Branch may be reluctant to undertake the advance determination of the question how a given expenditure is to be classified with reference to the rules enunciated by the Comptroller General in his decisions cited above. If any doubt exists, such charges may properly be made against .602 funds, as the statutes cited in paragraph 2, supra, do not consider to prohibit the expenditure of .602 funds for making repairs, alterations and improvements where the services and facilities of FEA cannot be utilized. 19 C. G. 923, 933; *In re T. N. Wilson, Inc.*, 24 F. Supp. 651 (E. D. N. Y. 1938).

6. Unvouchered funds are, of course, available for such expenditures where, for security reasons, the cost cannot be charged against .601 or .602 funds. Generally speaking, the use of unvouchered funds for such purposes should be restricted to situations where security considerations do not permit the use of FEA personnel, materials and equipment on the project, nor any disclosure of the existence of the project.

7. With reference to the attached claims, it appears from the file that plans and specifications were furnished by Public Buildings Administration, FEA, but that security necessitated outside contracting. It does not appear, however, that security requires that the very existence of the project be kept secret, or that disclosure of the nature and extent of the repairs and alterations involved would be prejudicial to the best interests of this agency. Hence we do not believe payment out of .603 funds would be appropriate.

8. Nor do we believe that this is a clear case where .601 funds may be used. Assuming that the necessity of the work done to the proper functioning of the agency can be shown, it might not be possible to present such proof for security reasons.

9. It is therefore our opinion that the claims represented by the attached invoices may properly be charged against .602 funds.

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